

12, where the application literally recites that “preferred *foams* of the present invention are substantially *stable*” (emphasis added). Similarly, the specification clearly supports the use of a “homogeneous stable suspension”. See, for instance, page 15, line 23 with regard to the preferred “homogeneous” nature of a “foamable formulation” of this invention. In turn, a preferred embodiment of such a formulation is quite clearly described (e.g., at page 5, line 28) as a “stable suspension” (as compared to an alternative preferred embodiment, in which the formulation is in the form of a solution).

The rejection under Section 112, second paragraph, is respectfully traversed. Regarding part (I), the claim clearly provides that the system includes, *inter alia*, a *formulation* (in the form of a solution or stable suspension) which is contained within a dispenser. The dispenser, in turn, is adapted to deliver that formulation in the form a spray or stable foam. When understood and viewed carefully in this manner, the specification makes clear the manner in which both the initial formulation and resultant foam are each “stable”, in their respective ways.

The Examiner’s concern regarding “chemical agent” and “chemical compound” is confusing, particularly since the latter term is not found in the claims. Instead the specification makes clear that a chemical agent can include a “compound, solution, or molecule”, and goes on to describe various examples of each. See, for instance, the section beginning at page 11, line 30.

Finally, the role of the anionic surface active agent as a delivery agent is also clearly described in the specification, see for instance, page 8, lines 4-8, where it makes clear that “delivery agent” includes “one or more ingredients that function to cause or facilitate either the foaming or spraying of the formulation when dispensed from an aerosol dispenser”. This function is clear, and not affected by the fact that a particular surface active agent may “generally” be included in other topical formulations, in order to serve other roles, such as a propellant.

With regard to part (II) of the rejection, the meaning and scope of “natural sea water” will be readily clear to those in the art, and is a common and accepted ingredient in cosmetic and similar formulations. Finally, in its preferred embodiment, the purification aspect is described, for instance, at page 14, lines 2 – 6, which describes passage of the sea water through a variety of filters.

The election requirement under 35 USC 121 is respectfully traversed. Election is required as between species identified as:

1. Claims involving hydrogen peroxide as the chemical agent; or
2. Claims involving purified sea water as the chemical agent.

With regard to the election of species requirement, it must be remembered that MPEP 802.02 clearly provides that an election of species requirement is merely a type of restriction requirement. As such, the present requirement fails to meet either of the two fundamental requirements of a restriction requirement, as set forth in MPEP 808; namely, that it provide: (1) reasons why the inventions *as claimed* are either independent or distinct, *and* (2) reasons for insisting on restriction therebetween. The latter requirement requires a showing that the examination of all claimed inventions in a single application would be a serious burden, in terms of separate classification, status in the art, or field of search. See also MPEP 816, on (“Give

Reasons for Holding of Independence or Distinctness”), which provides that “a mere statement of conclusion is inadequate” to support such a requirement.

Furthermore, the Examiner is directed to MPEP 811, which addresses the “Time for Making Requirement”. Since the primary purpose of a restriction requirement is to aid the USPTO by simplifying the search requirements and not unduly burdening an Examiner for a particular application, requiring a restriction requirement during the fourth Office Action, as in this case, is clearly not timely and does not serve to benefit either the Applicant or the USPTO.

Aside from these procedural concerns, Applicant also disagrees with the substance of the restriction. Purified sea water and/or hydrogen peroxide are merely alternative embodiments of the chemical agent of independent claims 1 and 11, and should not be required to be described as separate inventions. For all of these reasons, the election of species requirement fails to meet the Office’s own standards and should be withdrawn.

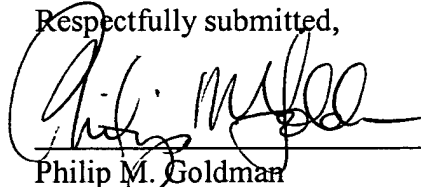
Nevertheless, since an election at this time is required, Applicants elect species 1 (hydrogen peroxide as the chemical agent), with traverse, and conditional upon a clear showing of the need and propriety of such a requirement. In turn, and in the absence of such a showing or further clarification, it would appear that every pending claim is readable on the elected species, by virtue of independent claims 1 and 11, except for claims 9,10,19, and 20, which specifically recite the sea water embodiment.

In the event the Examiner maintains this requirement, he is encouraged to telephone the undersigned in order to discuss the matter, and if need be, to attend to whatever remaining requirements might be appurtenant to a proper election of species requirement.

In view of the above remarks, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of all rejections is respectfully requested.

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Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

Amendments to the claims (where insertions are underlined and deletions placed in brackets):

1. (four times amended) A system for delivering a chemical agent-containing formulation in the form of a spray or stable foam, the system comprising an aerosol dispenser containing a homogeneous stable aqueous formulation comprising the chemical agent in [the form of] a solution or stable suspension and an anionic surface active agent as a delivery agent.